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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service	)	MM Docket No. 87-268

To: The Commission

COMMENTS OF FISHER BROADCASTING INC.

FISHER BROADCASTING INC.

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SUMMARY

Fisher Broadcasting Inc. ("Fisher") believes that the Commission's proposal for an all-UHF advanced television ("ATV") service threatens the existence of the free, over-the-air television broadcast system. Free, local television broadcasting has served the public uniquely well for decades. Indeed, in this proceeding the Commission has concluded that the public interest would be served best by instituting ATV within the existing framework of local broadcasting. VHF stations have served as a bulwark of that system, not only through their proven ability to provide strong local programming responsive to the needs and interests of their viewers, but through their role as the foundation of the national television networks that provide innovative entertainment and important national news, unifying the citizens of the nation. Yet the fundamental role VHF stations play in the local television broadcasting system, like the system as whole, is extremely complex and fragile. It depends on the continuation of local stations' ability to serve their viewers.

By forcing VHF stations to permanently convert to UHF channels for their ATV operations, the ability of those stations to reach their viewers is threatened. Even if UHF ATV channels could theoretically replicate VHF coverage patterns through increased power or tower height, real world limitations will prevent such a result. Therefore, the Commission's all-UHF roposal will result in a substantial loss of service presently provided by VHF stations, undermining the essential role of these

stations in serving the public and, ultimately, the well being of the free, over-the-air television broadcasting system. The benefits the Commission perceives in its all-UHF approach are far too remote and speculative to risk the certain harm that will result.

Fisher urges the Commission to adopt a more prudent approach to instituting ATV. The public interest would be served best by affording present VHF licensees the option, at the time licensees are required to relinquish their NTSC licenses, to convert their existing VHF NTSC channels to ATV and turn in their UHF licenses. This approach would maximize ATV service to the public and protect the integrity of the local television service that the Commission has intended to serve as the framework for ATV.

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COMMENTS OF FISHER BROADCASTING INC.

Fisher Broadcasting Inc. ("Fisher"), by its attorneys, hereby submits its Comments on the Second Further Notice of Proposed Rule Making in the captioned proceeding, 7 FCC Rcd 5376 (1992) ("Second Further Notice"). Fisher is the licensee of two VHF television stations in the Pacific Northwest, KOMO-TV, Channel 4, Seattle, Washington, and KATU(TV), Channel 2, Portland, Oregon, both of which are affiliated with the ABC television network. Fisher has operated KOMO-TV on its present VHF channel for nearly 40 years and has operated KATU(TV) on its present VHF channel for 30 years.

Fisher has joined today in the joint comments of the broadcast industry on the Second Further Notice. The principles set forth in those comments will aid in a more spectrum-efficient advanced television service ("ATV") allotment table by maximizing ATV coverage, minimizing interference, and providing a smoother transition process. Fisher, however, files these separate Comments to express its deep concern that the Commission's

proposal for an all-UHF ATV service threatens the very existence of the free, over-the-air television broadcast industry. As shown in detail below, the public interest would be served best by affording VHF stations the option of relinquishing, at the end of the ATV transition period, their UHF channels and continuing their ATV service on their existing VHF channels.

Introduction

1. For decades, American viewers have been served well through a system of free, over-the-air television broadcasting. Under this system, television stations in communities across the United States have offered news, public affairs, and entertainment programming responsive to the local needs and concerns of the viewers they serve. Indeed, when it first considered how best to institute advanced television in this country, the Commission concluded that

> broadcast stations provide services unique in the array of entertainment and non-entertainment programs freely available to the American public. Unlike many other countries, the United States has a strong and independent system of privately-owned and operated broadcast stations that transmit local and regional news, information, and entertainment as well as national and international programs. Therefore, initiating an advanced television system within the existing framework of local broadcasting will uniquely benefit the public and may be necessary to preserve the benefits of the existing system.[1/]

1/ Tentative Decision and Further Notice of Inquiry, MM Docket No. 87-268, 3 FCC Rcd 6520, 6525 (1988).

2. Along with local programming, the foundation of this broadcasting system is the ability of local stations, through their affiliations with national television networks, to provide -- free of charge -- innovative, high-quality programming and important national news that unifies the people of the nation. Indeed, the Commission has long recognized the essential role that national networks play in the system of free, over-the-air broadcasting.[2/]

3. This system -- one that has benefitted the public so well for so many years -- is, however, extremely delicate. It exists only through the continuation of numerous fragile, intertwined relationships between local stations, networks, programmers, advertisers, and viewers. Disruption of these relationships could well lead to the demise of the entire system of free, over-the-air television broadcasting, with it being supplanted by other distribution systems incapable of providing the unique benefits of locally responsive programming that television broadcasters provide. Indeed, in recent months the Commission has recognized that the American system of free television is rapidly losing ground to cable and other multi-channel providers, and has taken action to balance the unlevel playing field.[3/]

2/ See, e.g., Report on Chain Broadcasting and Order, Docket No. 5060, at 4 (May 2, 1941), aff'd sub nom. National Broadcasting Co. v. United States, 319 U.S. 190 (1943); Elimination of Modification of Section 73.658(c) of the Commission's Rules, 4 FCC Rcd 2755, 2757 (1989).

3/ See, e.g., Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd 4962, 5043 (1990); F. Setzer

(continued...)

4. Yet despite its initial pronouncements, and in a proceeding purportedly designed to bring new strength to the American system of television broadcasting, the Commission proposes an action that threatens to plunge this system into chaos. Specifically, the Commission proposes to require all television stations -- including the VHF stations which for so long have served as foundations of the provision of local and network broadcast television programming to the public -- to migrate to the UHF band to provide ATV service. The Commission does so on the basis of an optimistic and entirely unproven hypothesis: that ATV technology will eliminate the technical disparity between VHF and UHF service, thereby allowing all VHF stations to provide ATV on UHF frequencies without a loss of service.

5. As explained below, this hypothesis not only is unproven as a general matter, but is not likely to prove true in the real world. The forced relocation of present VHF stations to the UHF band will damage, if not destroy, the fragile system of free television broadcasting without any countervailing benefits. If it is technically necessary to utilize UHF ATV channels for the transition period, that may be unavoidable. However, the public interest will be best served by allowing VHF stations, at the end of the ATV transition period, to relinquish their UHF channels and commence ATV service on their existing VHF channels.

3/(...continued)
and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996 (1991); Notice of Proposed Rulemaking, Review of the Commission's Regulations Governing Television Broadcasting, 7 FCC Rcd 4111 (1992).

Discussion

I. The Continued Full Signal Coverage of VHF Stations Is Essential to the Free, Over-the-Air Television System

6. The system of free, over-the-air television broadcasting survives only through the ability of local stations to provide their viewers with high-quality programming that is responsive to the needs and interests of the communities they serve. This ability, however, is not self-perpetuating. It depends on the commitment of local stations to continue to provide excellent service to their viewers. The quality service that local television stations offer to their communities, and the ability of those stations to continually reinvest in that service, are a product of numerous intertwined relationships that each local station has developed with national networks, programmers, advertisers and the public. These relationships are fragile and carry expectations that a station will continue to serve its viewers.

7. VHF stations play an important role in this system of free, over-the-air television broadcasting, because VHF stations have long been strong sources of high-quality entertainment programming and comprehensive local and national news. This is due in large part to the fact that VHF stations serve as the foundation of national television networks. It is these stations to which the public has long turned to for the innovative entertainment programs and vital, unifying national news programs etworks bring. The strength of VHF stations as sources of strong network news and entertainment programming allows these

stations to reinvest in their strong local public service. It also allows them to maintain and improve their technical facilities. The benefits of the network/affiliate system and its stations' local programming have allowed Fisher to make more than $30 million in capital expenditures toward improving the service of KOMO-TV and KATU(TV) to the communities of Seattle and Portland.

8. The role of VHF stations as the backbone of the strong local and national programming provided by the free, over-the-air television broadcast system is attributable mainly to the strength and quality of the signal that VHF stations provide. It is no coincidence that the majority of television stations affiliated with the major networks are VHF stations. Because of the inherent nature of their signals, VHF stations are able to provide high-quality signals and marketwide coverage in any terrain. These stations' affiliated networks need this coverage so that their programs can reach a national audience. The ability to achieve national coverage is increasingly important as the networks' share of viewers dwindles in the face of multi-channel competition. Fisher's experience is that UHF stations cannot provide full market coverage in areas with uneven terrain like Seattle and that they therefore have limited viability in such areas. Confirming this is the fact that there are several UHF channels allocated to the Seattle area that are vacant. The full coverage of VHF stations also is important to programmers and advertisers. By providing this coverage, VHF stations have nurtured these relationships, allowing them to reinvest the benefits of these relationships in local service. Ultimately,

the technical strength of VHF stations is relied upon by the viewing public, which looks to these stations as continuing and dependable sources of quality entertainment and immediate and comprehensive coverage of local and national news.

9. Because of the essential role VHF stations play in the system of local television broadcasting, the maintenance of these stations as sources of full market-wide coverage is particularly crucial to universal free television. Were viewers unable to turn to these stations for the high-quality local and national programming they presently provide, it is likely that they would be unable to find such broadcast programming elsewhere, forcing them to seek out sources of this programming by means other than free, over-the-air television. Ultimately, the local broadcasting system that has served the public so well could be entirely superseded by other video distribution systems that already threaten the vitality of free broadcast television. It is therefore critical that VHF television stations be able to maintain the full signal coverage that the public has come to expect and need.

II. The Commission's Predictions as to the Propagation Capabilities of UHF ATV Television Are Entirely Speculative as Well as Unrealistic in Real World Terms

10. The joint comments of the broadcast industry properly note that packing all ATV stations into the UHF band is almost certain to reduce overall ATV coverage and increase interference. For a VHF station forced to a UHF channel to provide ATV service, this problem may well be particularly acute. It must be

emphasized that the Commission's prognosis that "the disparity that currently exists between the UHF and VHF bands will be much less significant for ATV service (Second Further Notice, para. 18) cannot automatically be assumed to be true. It cannot be proven true or false until paired UHF ATV channels actually are put into service in every community served by a VHF station.

11. All that is known is from NTSC experience, and that experience indicates that a UHF signal requires far greater transmitter power and antenna height than a VHF signal to deliver equivalent signal coverage and is limited by terrain. Lacking an ATV transmission standard and real world experience, the Commission's conclusion that any disparity between VHF and UHF channels will be eliminated appears speculative. More importantly, even if UHF ATV channels were theoretically equal to VHF ATV channels, real world conditions dictate otherwise.

12. As to the first point, Fisher believes the Commission does not yet have the technical data from actual experience to reliably predict that the UHF/VHF technical distinction will be eliminated by ATV. More importantly, the Commission does not have data derived from experience to indicate that a VHF station's geographic coverage can be duplicated on a UHF ATV channel. If not, then the Commission will, by mandating at this time an all-UHF service, run the risk of crippling substantially, if not fatally, the very broadcasting service to which it is committed.

13. As discussed in the joint comments of the broadcast industry, the Commission's proposed service area for ATV stations is smaller than the current service area of most television

stations. As a result, it would appear that the Commission's notion of VHF/UHF equality may be the result of reducing VHF coverage to match UHF coverage rather than expanding UHF coverage to match VHF coverage. While UHF and VHF may end up with equal coverage under the Commission's proposal, many viewers that have been well served by the reach of VHF facilities will now find themselves without that service. This will be particularly true for areas of uneven terrain where UHF's line of sight limitations absolutely prevent VHF-equivalent service.

14. Even accepting hypothetically that UHF ATV stations can compensate for UHF propagation limitations through increased power and tower height, those options are not always feasible or sufficient. A UHF signal is entirely line of sight and likely incapable of replicating VHF coverage in hilly terrain such as exists in Seattle and Portland, the areas served by Fisher's stations. Indeed, based on the known propagation characteristics of an NTSC UHF signal, Fisher believes that without a substantial elevation in tower height, its stations may be unable to deliver, on UHF ATV channels, the minimum coverage the Commission proposes to require of ATV stations -- let alone replication of the stations' current coverage in the numerous "shadow areas" that comprise Fisher's Seattle and Portland service areas. Thus, it is possible, and Fisher's experience indicates that it is likely, that even after incurring substantial costs for increases in transmitter power and tower height, VHF stations forced to migrate to the UHF band will provide ATV service which is impaired in coverage and signal quality.

15. To make matters worse, the technical modifications that VHF stations will likely require in an effort to offset the limitations of UHF transmission channels will in many markets be difficult, if not impossible, to implement. Fisher believes that the political situation faced by Fisher's KOMO-TV in the Seattle area is typical of that faced by stations across the country in making technical modifications to their facilities. For example, Fisher fought without success for eight years to obtain permission from local authorities to increase the height of its tower from 1006 feet to 1349 feet above mean sea level. The city of Seattle has now passed an ordinance that essentially freezes construction of new towers as well as increases in the height of existing towers. Thus, even if the Commission could assure Fisher that an increase in its tower height would provide coverage equivalent to its current VHF operation, the local legal impediments to making the necessary modification would prevent achievement of such coverage. Similar local land use constraints undoubtedly exist in areas served by many other affected VHF stations, and FAA restrictions on tower height also limit the ability of these stations to overcome the technical limitations of UHF channels.

16. In sum, for a VHF station, there are two serious technical problems with converting to UHF ATV operation. The first problem is the unlikelihood that a UHF signal will, under local conditions, be able to replicate a VHF station's current level of service even with increased power and tower height. The second problem is that even if the provision of equivalent UHF service is technically feasible, there will undoubtedly be

serious and perhaps insurmountable legal and other obstacles to implementing such technical remedies. Regardless of the cause, a significant portion of local viewers will lose that particular service altogether or have to endure the difficulties of receiving a weakened signal. Given the objective of the ATV proceeding to improve the quality of television signals received by the public, Fisher believes it would be antithetical to that goal to reduce the local availability of television service by forcing VHF stations to convert to UHF channels.

III. Forced Migration of VHF Stations to the UHF Band Will Undermine the Essential Role of Those Stations, Harming the System of Free Local Television Broadcasting

17. A requirement that VHF television stations migrate to the UHF band to provide ATV service would essentially undermine the fragile but essential role of those stations as dependable providers of high-quality entertainment, immediate and comprehensive national news, and responsive local news and public affairs to their communities. Affiliations between networks and VHF stations would be disrupted, and in many cases would end, as a result of the relocation of these stations to high-numbered UHF channels that are by their nature more susceptible to interference and less conducive to full marketwide coverage. The migration of VHF stations to the UHF band also will affect those stations in the eyes of programmers and advertisers, severely damaging the stations' ability to reinvest in continued strong public service.

18. Though the Commission perceives otherwise, there are no countervailing benefits to an all-UHF ATV service that might counterbalance the almost certain harm the Commission's proposal will cause. As the joint comments of the broadcast industry point out, the Commission's perceived economies of scale from single-band UHF receivers and transmitters are only remotely likely to be realized. In fact, for VHF stations forced to migrate to the UHF band, the Commission's UHF-packing proposal will result in quite the opposite of the economies of scale the Commission envisions. It is conceivable that some UHF NTSC stations may attain efficiencies in the transition to ATV by retaining some of their existing UHF NTSC equipment. VHF stations, however, would have no hope of doing so -- they would need to discard all of their VHF equipment lock, stock, and barrel and purchase entire new inventories of UHF equipment. Moreover, given the reduced minimum spacings almost certain to occur from a jam-packed UHF band, many stations -- VHF and UHF alike -- will incur additional costs modifying their facilities to prevent interference to and from other stations (if they can do so at all). Thus, not only are consumers unlikely to benefit from any economies of scale of the Commission's proposal, but such an approach will increase costs to stations and thereby damage the quality of television service to the public.

19. Nor, in Fisher's view, is the Commission's apparent vision of a large block of VHF spectrum available for other uses apt to become reality. Fisher believes it is not likely that the ATV technical standard will be able to meet the Commission's optimistic vision of a packed UHF band. Moreover, the answer to

that question will depend in large part on the individual characteristics of station location, and that answer cannot be determined except by actual experience. It may well be that many more VHF channels will have to be allocated to ATV to prevent interference and to avoid losing a substantial amount of coverage, making it impossible for any appreciable amount of VHF spectrum to be allocated to other services. Worse yet, the Commission may reallocate that spectrum only to discover that it has left itself with inadequate spectrum to establish an interference-free ATV system.

IV. To Serve the Public Interest in a Spectrum-Efficient ATV Service, and to Avoid Harm to Free, Over-the-Air Television Broadcasting, the Commission Should Afford VHF Stations the Option of Converting Their VHF NTSC Channels to ATV When the Commission Requires Licensees to Turn in Their NTSC Licenses

20. Fisher believes that the Commission's proposal for an all-UHF ATV service is premature. It proposes to mandate the wholesale relocation of virtually all broadcasters to the UHF band -- jeopardizing the service VHF stations have long provided to the public and risking irreparable harm to the system of free, over-the-air local television broadcasting -- without any assurance that VHF stations can technologically and legally make the changes necessary to maintain the quality of signal and coverage possible in the VHF band. Most fundamentally, it must not be assumed that VHF stations will be able to match their existing NTSC signals over a UHF ATV channel. Only upon activation of the UHF ATV facility and assessment of its

performance over time can one determine whether that is the case for an individual station and its community of service.

21. Thus, the public interest would be served far better by affording present VHF licensees the option, at the time licensees are required to relinquish their NTSC licenses, to convert their existing VHF NTSC channels to ATV and turn in their UHF licenses. Such an approach would permit broadcasters, based on their demonstrated individual experience with the VHF ATV channel in their specific location during the transition period, to determine on an individual basis whether ATV service in UHF spectrum outweighs the detriments. This approach would therefore maximize ATV service to the public, reduce interference, and avoid a massive disruption of the television broadcasting system.

Conclusion

The Commission has found it in the public interest to establish ATV in the framework of local broadcasting in order to preserve the unique services broadcasters provide the public. Fisher believes the Commission's proposal for an all-UHF ATV service flies in the face of that objective. Based on the only known experience with UHF television broadcasting, it would deprive the public of the strong local service VHF stations have provided for years, and thereby undermine the vitality of locally based free, over-the-air television broadcasting.

Fisher urges the Commission to take a measured and prudent regulatory approach and allow VHF broadcasters the option, at the end of the ATV transition period, of relinquishing their paired

UHF channels and instituting ATV service on their existing VHF channels.

Respectfully submitted,

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